IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11444 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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RAMANBHAI NARSINHBHAI PATEL - Petitioner(s)

Versus

STATE OF GUAJRAT THR' SECRETARY &2 - Respondent(s)

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Appearance :

MR BP MUNSHIfor Petitioner No(s).: 1.
MS NIRALI B MUNSHI for Petitioner No(s).: 1.

MS. ARCHANA RAWAL AGP for Respondent No(s).: 1.
RULE SERVED BY DS for Respondent No(s).: 1,3.
MR MANISH J PATEL for Respondent No(s).: 2.

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CORAM :HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 13/07/2005

ORAL JUDGMENT

1.By filing instant petition under Articles 226 and 227 of the Constitution of India, petitioner seeks to challenge the order dated 1.4.2005 recorded in CFO No. 19 of 2005 by the learned Assistant Judge, Sabarkantha at Himmatnagar so far as it relates to payment of special cost of Rs.1000/- to each of the respondent Nos. 1, 2 and 3 from the personal pocket of the petitioner.

2.This Court has considered the submissions advanced by Mr. B.P.Munshi, learned advocate of the petitioner and Mr. Archana Rawal, learned AGP for respondent No.1 State of Gujarat, perused the impugned order as well as statutory provisions contained under the Code of Civil Procedure ('the Code' for short).

3.It may be noted that the petitioner had filed Regular Civil Suit No. 15 of 2005 for declaration and permanent injunction. In the said Suit the petitioner has also moved an application exh.5 claiming interim injunction during the pendency of the suit, which came to be rejected. Aggrieved thereby the petitioner went in appeal before the learned District Judge, Sabarkantha at Himmatnagar by filing CFO No. 19 of 2005 which was heard by the learned Assistant Judge and vide order dated 1.4.2005 he dismissed the said appeal by imposing special cost of Rs.3000/-, i.e. Rs.1000/- to each of the respondents Nos. 1, 2 and 3.

4.The petitioner has confined his prayer only to the setting aside of the imposition of cost by relying upon Section 35(A) of the Code which in terms stipulates awarding the compensatory costs in respect of false or vexatious claims or defences. Sub Section 35(A)(1) in terms stipulates that compensatory costs may be awarded in any other suit or proceedings, including a execution proceeding but excluding an appeal or a revision.

5.Admittedly, the order which is impugned under the petition was passed in Misc. Civil Appeal, therefore, by virtue of this Section, compensatory cost cannot be imposed in the proceedings of an appeal. The learned Assistant Judge has committed jurisdictional error in imposing the cost as it is against the statutory provisions contained under Section 35(A) of the Code. Therefore, in exercise of powers conferred under Article 227 of the Constitution of India, the said jurisdictional error is required to be corrected by this Court by allowing this petition.

6.For the foregoing reasons, the petition succeeds and accordingly it is allowed with no order as to costs. The order dated 1.4.2005 recorded in CAFO No. 19 of 2005 by the learned Assistant Judge, Sabarkantha at Himmatnagar is hereby quashed and set aside so far as the same relates to payment of special cost of Rs.1000/- to each of the respondent Nos. 1, 2 and 3 from the personal pocket of the petitioner. Rule is made absolute accordingly.

(A.M.Kapadia,J)

Jayanti*